explaining either why the internal boundary that encompasses Chechnya in the Russian Federation is so different from the boundaries of the seceding Yugoslav federal units or why the well-documented—and continuing—history of violent oppression of Chechnya by Russia is irrelevant to the evaluation of Chechen claims to independence. Furthermore, given that the distinction between Union Republics and Autonomous Republics of the former Soviet Union was drawn largely on instrumental grounds to further Soviet-Russian imperial interests, it would be difficult to argue that according to *uti possidentis* Union Republics such as Georgia had the right to secede but Autonomous Republics do not.

President Clinton plumbed the depths of confusion (assuming his statement was sincere) when he likened Yeltsin’s suppression of Chechen secession to Lincoln’s preservation of the Union. Such statements obscure the moral issues, failing to distinguish between secession by a colonized people with whom the colonial power had made and then broken a series of autonomy agreements (the Chechens) with the effort to suppress a secession undertaken at least in large part to preserve and extend the institution of slavery (the Southern secessionists).

The tendency of the United States and other Western Powers to take the line that the wars of Chechen secession are “internal matters” for Russia also glides over another important distinction regarding the international legal response to secession. It is one thing to assert that the Chechens have no right to secede; it is quite another to say that if they have no right to secede then the means by which Russia resists their secession are strictly an “internal matter,” of no legitimate concern to the international community.

In my judgment a very strong case can be made that the pattern of colonial injustice and the violation of autonomy agreements confers on the Chechens a unilateral right to secede. But even if I am wrong about this there is ample evidence that Russia has violated international law by the brutal and indiscriminate means by which it has attempted to crush the secession. Although existing international law, as I have argued, fails to provide an adequate basis for a principled response to the question of whether a group should be accorded the unilateral right to secede, it does supply a substantial normative structure for controlling the character of secessionist conflicts, at least from the standpoint of the state’s role in them.
Of course having a coherent and morally defensible theory of the unilateral right to secede would not be sufficient for a more effective and humane international legal response to crises of secession. But it may well prove necessary. For as I noted in Chapter 1, it is true that the international community lacked the political will to respond credibly to the Yugoslav and Chechen conflicts. However to rest content with the diagnosis of a failure of will is to overlook the role that principled belief can play in mobilizing political will. Coherent principles can contribute to constancy of will.

The status of intrastate autonomy in international law

Current international law also fails to provide coherent conceptual and institutional support for forms of self-determination short of full independence and for a principled way of ascertaining when more limited modes of self-determination are appropriate. Thus in her excellent systematic analysis of the range of alternative self-determination arrangements short of secession, Ruth Lapidoth concludes that “except for ‘peoples’ [in the international legal right of self-determination of peoples, which applies unambiguously only to classic colonial domination and perhaps military occupation], international law has not yet established a right to autonomy.”

This statement requires a significant qualification: In the field of indigenous peoples’ rights (which Lapidoth explicitly excludes from her study), international law may be coming to recognize that various forms of intrastate autonomy are appropriate, and may even eventually acknowledge that in some cases some groups have an international legal right to them.

However, even then, talk about “the” right to self-determination is profoundly misleading so far as it suggests a single, one-size-fits-all entitlement. Moreover, international law concerning indigenous peoples is very much in the formative stages and it is at present

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unclear whether the rights of self-determination toward which it seems to be headed will have application beyond the special case of indigenous groups.

While there is a broad consensus that international law on self-determination (including secession) is deficient, there is much controversy as to how it should be improved. In this chapter I will argue that what at first might seem the obvious way to develop a more comprehensive international law on self-determination is not the proper remedy. The task is not to develop a more comprehensive international right to self-determination that would encompass the right to secede but also include an entitlement to intrastate autonomy if the right-holder chooses that less drastic option. Instead, a coherent, practical, and morally defensible international legal system would uncouple secession from other forms of autonomy and deny that recognition of a group’s right to autonomy within the state entitles it to opt for full independence if it chooses.

Because there are so many possible forms of intrastate autonomy and such a variety of considerations that must be brought to bear to make a case that any particular group is entitled to any one of them, misleading talk of the right to autonomy and the right to self-determination should be avoided. A more theoretically perspicuous and politically efficacious discourse would feature a rather limited and exceptional right to secede while acknowledging that there are diverse legitimate interests in autonomy that can best be served in different circumstances by a correspondingly broad range of intrastate autonomy regimes. 10

A strategy for developing the needed theory

In this chapter and the next I develop a way of rethinking the international law of self-determination (where the latter term covers both secession and various forms of intrastate autonomy).

The core idea of the strategy is captured by the slogan “isolate and proliferate”: Isolate a limited right to unilateral secession understood as a remedial right only—that is uncouple the unilateral right to the most extreme form of self-determination from the question of intrastate autonomy—and then proliferate the options for intrastate autonomy arrangements.

The strategy I am proposing also includes the uncoupling of the right to secede from nationality. To adopt the Remedial Right Only Theory of the unilateral right to secede is to reject the claim that nations as such have a right to secede.\footnote{Omar Dahbour also advocates the uncoupling of self-determination and nationality in his ‘Self-Determination in Political Philosophy and International Law’, History of European Ideas 16 (1993), 879–84.}

The core idea of my approach to self-determination is not novel.\footnote{\textit{It is explored, to take a few examples, in Halperin, Shaffer, and Small in Self-Determination in the New World Order, by Lapidoth in Autonomy, Sovereignty, and Self-Determination; and by Christian Tomuschat, ‘Self-Determination in a Post-Colonial World’, in Christian Tomuschat (ed.), \textit{Modern Law of Self-Determination} (M. Nijhoff Publishers, Dordrecht, 1993), 1–20. I also endorsed it many years ago in ‘The Right to Self-Determination: Analytical and Moral Foundations’, Arizona Journal of International and Comparative Law 8/2 (1991), 41–50.}} However, others who have endorsed what I label the “isolate and proliferate” strategy have not systematically articulated its moral foundations; nor have they drawn its implications for intervention. My goal is to develop the “isolate and proliferate” strategy more systematically, integrating it with a justice-based conception of legitimacy, making a more explicit and persuasive case for a limited unilateral right to secede, and arguing that in some cases intervention may be justified to support intrastate autonomy agreements as alternatives to secession and, in exceptional circumstances, to intervene to help sustain them.

The objective of Part Three of this book, then, is to develop the isolate and proliferate strategy in detail, grounding it in the justice-based theory of legitimacy developed in Parts I and II. The key to achieving this objective will be to refine the theory of a limited right to secede I first explored in \textit{Secession} (1991), to argue for the superiority of the refined theory over several rival theories, and then to show that the international legal order ought to complement the constrained stance on unilateral secession that the Remedial Right
Only Theory recommends with a much more permissive and supportive posture concerning intrastate autonomy agreements.

II. A Justice-Based Theory of Secession

Institutional moral reasoning

As I noted in Chapter 1, the proper way to determine what the international law of secession ought to be is to engage in holistic thinking about what sort of legal right to secede best harmonizes with the other main elements of a morally defensible international legal system. This approach is in stark contrast to that of those political philosophers who proceed by trying to determine the conditions under which a group has a right to secede by consulting "our moral intuitions" about particular hypothetical cases, abstracted from any institutional context, and without any connection to the idea of a law-governed practice of recognition that determines the status of new entities that emerge through secession.

Often such theorists attempt to develop a conception of the moral right to secede without taking institutional considerations into account at all and then simply say that existing institutions ought to be changed so as to embody the moral right to secede they recommend. Somewhat more sophisticated practitioners of this method of appealing to moral intuitions independently of institutional considerations acknowledge that the principles abstracted from moral intuitions evoked in response to isolated individual noninstitutional examples must then pass a feasibility test—it must be possible to incorporate them into the international legal order.13

This latter version of the noninstitutional approach is closer to the mark but still deficient. Whether a group has the right to its own state, or even the right to attempt to get its own state, must depend, inter alia, not only upon whether the right could be implemented, but also upon whether implementing it would be consonant with the proper goals of the system in which statehood is defined and in which the practice of recognizing entities as legitimate states takes place. A particular conception of the right to secede might be feasible, yet implementing it might detract from rather than enhance the

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13 One example is Moellendorf, Cosmopolitan Justice.
morally attractive features of the system. Such dissonance might occur, for example, if the proposed norm regarding secession interacted with existing norms to create incentives for states to act unjustly or which encouraged armed conflict. (I will argue later that this is the case with nationalist theories of secession, those that ascribe the unilateral right to secede to nations as such.)

The "moral right" theorist might reply that his conception of the right to secede is institutional: He or she is making a moral argument for including a certain conception of the unilateral right to secede in an ideal international legal order. The idea is that one first develops a theory of the ideal institutional right to secede that takes into account the proper goals of the system and then considers whether it would be feasible to implement it.

If this is what is meant by saying that we must first develop an account of the moral right to secede and then proceed to the question of what principles ought to be incorporated into international law, then pumping intuitions about individual cases abstracted from institutional considerations looks even less credible than before. Whether a particular principle specifying the right to secede for an ideal institutional order is defensible must depend upon how well that principle fits with the other principles that comprise the ideal theory. But to my knowledge, those who suggest that they are proposing a right to secede for ideal theory have not produced so much as a sizeable fragment of the larger set of principles of which the right to secede is to be a part.\footnote{See e.g. Wellman, "A Defense of Secession and Political Self-Determination".} Instead they have proceeded as if it is possible to give a freestanding theory of the right to secede.\footnote{Moellendorf in Cosmopolitan Justice offers principles for an ideal theory of global distributive justice, but he does not discuss principles of recognition legitimacy; nor does he distinguish between the right to secede and the right to recognition as a legitimate state.}

It is important not to misunderstand the nature of my criticism of what might be called the noninstitutional, moral right approach, the attempt to justify a principle specifying the right to secede without taking institutional considerations into account and without integrating the theory of secession with a more comprehensive moral theory of international law. I am not denying the distinction between ideal and nonideal theory. My point, rather, is that both ideal
and nonideal theory must be institutional because the right to secede is inherently institutional (as I argued at length in Chapter 1).

A second potential misunderstanding is also worth noting. I am not denying that there is a distinction between the conditions under which a group is morally justified in attempting to throw off the state's control over the territory they occupy and to establish their own state, on the one hand, and what sort of principles regarding the right to secede ought to be incorporated into international law. In this volume I am interested in the latter, not the former.

One must acknowledge, of course, that here as in other cases, there can be a conflict between the way the law ought to be and what some individual or group is morally justified in doing in a particular case. Even the best law may not be wholly congruent with morality. Sadly, there can be times when there are conclusive moral reasons for enforcing a law that it would be morally justifiable for someone to break under exceptional circumstances.

Some philosophers writing about the right to secede disclaim any direct implications of their views for how international law ought to be. They would protest that they are providing only a theory of "the moral right to secede," leaving it open whether this moral right ought to be formulated as a legal right in the system. Call this the dualist position.

There are two problems with the dualist position. First, it is quite untrue to the actual political discourse of secession. When a group asserts the right to secede, it means by this that it at least has the right to attempt to form its own legitimate state, if not that it is entitled to its own legitimate state, and that, as I have just argued, is to make an institutional claim, and hence one that can only be evaluated by taking into account the proper goals of the system. Second, and more important, if the dualist denies that the moral concept of the right to secede he is working with has any institutional implications and hence that congruence with institutional goals is irrelevant to the justification for his characterization of that right, then we have no reason to think that the right as he conceives it is relevant to determining what the international law of secession should be. The more radically separate the justification of the alleged moral right to secede is from institutional considerations, the wider is the gap between that justification and support for any proposal concerning what the international legal right to secede should be.
III. Theories of Secession

Criteria for evaluating rival theories

Before one tries to evaluate rival theories of the right to secede, one ought to be clear about what the criteria for comparative evaluation are. Surprisingly, discussion of the criteria for comparative evaluation of rival theories is largely absent in the existing normative literature on secession.

The following criteria appear to be the most crucial. Spelling them out makes even clearer the fact that a theory of the right to secede requires institutional moral reasoning.

1. First and foremost, as I have already noted, the theory must provide a cogent account of the territorial claim that is essential to assertions of the right to secede. Recall that, as Lea Brilmayer stresses, secession is not merely the repudiation of the state’s political authority over a group of persons, nor merely the attempt to form a new political association among persons; it is the attempt to appropriate territory claimed by an existing state and to exercise the functions characteristic of states within that territory, with the implication that the state’s claim to this territory is invalid. Accordingly, a theory of the right to secede must explain why those to whom it ascribes the right to secede have a valid claim to the territory in question, in spite of the fact that the state lays claim to the territory.

2. The theory ought to possess the virtue of “progressive conservatism.” The principles it proposes ought, if implemented, to achieve an improvement of the existing system (ameliorating at least some of the more serious defects in the current system’s conceptual and normative resources for responding to secessionist conflicts noted at the beginning of this chapter).
Other things being equal, if two rival theories each would achieve moral progress if implemented, but one is consistent with some of the best features of the existing system and the other is not, the former is preferable. The rationale for this criterion is that the overall moral theory of international law of which the theory of secession is to be a part should at least be coherent, and preferably should exhibit mutual justificatory support among its elements, and that the guiding goal of reform should be the overall improvement of the system.

3. The theory ought to possess the virtue of moral accessibility. It is not enough that it is possible to implement the theory; it also should be possible to do so by means and transitional processes that do not involve unacceptable moral costs. This criterion was first articulated in Chapter 1 as a desideratum for moral theories of international law. It applies also to the components of such theories, including theories of the right to secede. For example, a theory of the right to secede whose principles could only be implemented at the price of violent changes in state boundaries with massive violations of human rights would not be acceptable. Of course, no substantive theory of the right to secede is likely to be free of moral costs, even when conscientiously implemented; but other things being equal, a theory whose implementation runs a lesser risk of human rights violations is a better theory.

4. The theory ought to possess the virtue of incentive compatibility, or at least should minimize perverse incentives. Implementation of the principles it recommends should not create perverse incentives— incentives to act in ways that are counter-productive either with regard to the goals the principles are supposed to promote or other important goals of the system into which the principles are to be incorporated. For example, a theory of the right to secede that ascribed to federal units the right to secede if a majority of their populations desired independence would create an incentive for the governments of centralized states to resist efforts at decentralization, fearing that they would be the first step toward disintegration.

Yet, not infrequently a strong case can be made for decentralization, either on grounds of efficiency, or as a means of achieving

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16 In 'Theories of Secession' I used the term 'moral accessibility' for what I now label moral convergence.
autonomy for groups within states, as a way of increasing participatory democracy, or for other reasons. Therefore, other things being equal, a theory whose implementation would create incentives to resist federalization is deficient. Similarly, if the implementation of a theory of the right to secede would tend to undermine the processes of deliberative democracy by introducing powerful incentives for strategic behavior on the part of citizens (unprincipled threats of “exit” by secession), then other things being equal, this is a strike against the theory.

5. The theory ought to possess the virtue of moral convergence. Other things being equal, a theory whose principles can be affirmed from the perspectives of a number of different existing ethical views, both secular and religious, is preferable. At least from the standpoint of nonideal theory for a system that currently lacks powerful enforcement mechanisms, there is much to be said for principles that can command voluntary allegiance. To use Rawls’s terminology, it is a point in a theory’s favor if it is the focus of a broad overlapping consensus.

In my judgment, this fifth principle should not be understood as a meta-ethical constraint on legitimacy, that is, as being based on the notion that it is morally justifiable to enforce only those principles that all upon whom they will be enforced could agree to from the standpoint of their own ethical views. I have already criticized the Rawlsian conception of tolerance that this meta-ethical view implies, in Chapter 3 (Human Rights). Instead, I understand the fifth theoretical virtue as a condition whose satisfaction contributes to compliance with the principles of a theory that satisfies it, on the assumption that likelihood of compliance is an important consideration in nonideal theory. Moral convergence is an especially compelling theoretical desideratum in a system in which widespread allegiance to the principles a theory proposes is crucial because there is no effective enforcement mechanism.

Two types of theories of the unilateral right to secede

Moral theories of secession can be divided into two main types: Remedial Right Only Theories and Primary Right Theories. The proponents of these rival types of theories do not always make it clear whether they are offered as accounts of (1) the conditions
under which groups have a moral right to secede or of (2) the conditions under which international law ought to recognize a group as having a right to secede. (They also frequently fail to distinguish between the right to secede as the right to attempt to form an independent state and as the right to recognition as a legitimate state.)

My focus will be on (2), since my goal is to integrate an account of secession into a more comprehensive moral theory of how international law should be. I will also proceed on the assumption that these two theoretical approaches are accounts of the unilateral right to secede. (What international law should say, if anything, about negotiated or constitutional secession is another matter, with its own complexities, some of which I have addressed in other publications.17) My aim, then, is to evaluate Remedial Right Only and Primary Right Theories as accounts of how the international legal order ought to respond to attempts at (unilateral) secession, on the assumption that the principles these theories recommend are to be embedded in a system of principles constituting a comprehensive moral theory of international law.

Remedial Right Only Theories conceive of the right to secede as analogous to the right to revolution as understood in the mainstream of liberal political theory: as a remedy of last resort for persistent and grave injustices. Revolution aims at the overthrow of government; secession only at severing a portion of the state’s territory from its control. What is common to Remedial Right Only Theories of the (unilateral) right to secede and the mainstream liberal position on the right to revolution is that in both cases the right only exists under conditions of serious, persisting injustices.

Different Remedial Right Only Theories provide different accounts of the sorts of injustices for which secession is the appropriate remedy of last resort. One major division along these lines is between Remedial Right Only Theories that recognize only (1) genocide or massive violations of the most basic individual human rights and (2) unjust annexation, as each being sufficient to generate a right to secede; and those that also recognize (3) the

state's persistence in violations of intrastate autonomy agreements. The type of Remedial Right Only Theory I will advance includes (3) as well as (1) and (2), thereby correcting what I now take to be a serious flaw in the theory of the right to secede I advanced in *Secessions*, which failed to recognize (3).

It is important to note that Remedial Right Only Theories only concern the conditions under which there should be an international legal right to *unilateral* secession. They are compatible with the view that international law should take an entirely permissive stance toward negotiated or constitutional secession. For this reason, Remedial Right Only Theories are not as conservative as they might first appear. Furthermore, understood as proposals for reforming international law, rather than as comprehensive moral theories of secession, Remedial Right Only Theories do not rule out the possibility that there may be some cases in which a group would be morally justified in seceding even if its doing so would violate the international legal rule they recommend. As I observed earlier, even the best laws may not achieve a complete congruence between the legal and the moral. Nevertheless, for reasons that will become clear below, I believe that the Remedial Right Only approach to the international law of secession is highly congruent with the morality of secession, and this is a point in its favor.

*Primary Right Theories*, in contrast, have a more permissive view about what international law should say about (unilateral) secession. They reject the thesis that international law should only recognize the (unilateral) right to secede as a remedy of last resort for persisting, serious injustices. The term “Primary Right” is appropriate to signal that these theories recognize a right to secede that is *not* remedial and hence not derivative upon the rights whose violation its exercise is supposed to remedy.

Primary Right Theories divide into two main types: Ascriptive (Nationalist) Theories and Plebiscitary Theories. The former hold that certain groups whose memberships are defined by what are sometimes called ascriptive characteristics should have the (unilateral) international legal right to secede, simply because they are such groups, independently of whether they have suffered any injustices. Ascriptive characteristics include being of the same nation or ethnicity or being a “distinct people.” Such characteristics are called “ascriptive” because they are ascribed to individuals independently
of their choice.) The most common form of Ascriptive Theory is the view that nations should be recognized under international law as having a right of self-determination that includes the (unilateral) right to secede. Accordingly, my criticism of Ascriptive Right Theories will focus on what might be called the nationalist theory of the unilateral right to secede.

In contrast, Plebiscitary (also called voluntarist or associativist) Theories assert that international law should recognize a (unilateral) right to secede where a majority of persons residing in a portion of a state's territory wish to form their own state there, regardless of whether the secessionist group's members are united by any characteristics other than the desire for independence. On this view, the secessionists need not be a nation or ethnic group (or be members of a "distinct society" or people or cultural community).

What Ascriptiveist and Plebiscitary Theories have in common is that they do not require injustice of any sort, much less large-scale and persistent basic injustices, as a necessary condition for the (unilateral) right to secede. However, both types of Primary Right Theories allow the possibility that injustice justifies (unilateral) secession as well. Primary Right Theories, then, are not Primary Right Only Theories; they allow secession as a remedy, but hold that it can be justified on nonremedial grounds as well.

Remedial Right Only Theories

In Secessio (1991) I argued for a fairly simple version of Remedial Right Only Theory, one that primarily recognized two sorts of injustices as being sufficient to generate a (unilateral) right to secede: (1) large-scale and persistent violations of basic individual human rights, and (2) unjust taking of a legitimate state's territory.

Injustice of type (2) is illustrated by the case of the Baltic Republics' secession from the Soviet Union. Lithuania, Latvia, and Estonia were independent states, recognized as such in international law when the Soviet Union forcibly annexed them in 1940. An example of injustice (1) is the massive human rights violations suffered by the population of East Pakistan, for which the secession of East Pakistan in 1971 to become the independent state of Bangladesh can be seen as a justifiable remedy.